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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL BAZLEY,

Defendant and Appellant.

C078234

(Super. Ct. Nos. 92F02430,
94F04283, 09F05961,
12F02678)

Defendant Michael Bazley appeals the trial court's denial of his request to designate his 1994 conviction for violating Health and Safety Code section 11377 a misdemeanor. We reverse the judgment.

FACTS AND PROCEEDINGS

Preliminarily, we note that defendant filed a request for dismissal of this appeal on January 20, 2016, saying the trial court had granted relief on November 30, 2015, and

therefore the appeal was moot. On February 1, 2016, defendant filed a motion to withdraw the request for dismissal, to request a stay of the proceedings in this court, and for an interim remand to the trial court citing *People v. Awad* (2015) 238 Cal.App.4th 215 and our opinion in *People v. Scarbrough* (2015) 240 Cal.App.4th 916. Because the trial court lacked jurisdiction to grant relief on November 30, 2015 given the pendency of this appeal, we grant defendant's request to withdraw the motion to dismiss. We deny the request for stay and an interim remand.

Defendant filed petitions for redesignation of sentence under Proposition 47 in the trial court as to four separate cases, case Nos. 92F02430, 94F04283, 09F05961, and 12F02678. These cases were consolidated on appeal. Defendant claims error only as to case No. 94F04283. Accordingly, we relate only the facts and history relevant to that case.

In 1994, a jury convicted defendant of, among other things, possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). In 1998, the trial court sentenced him to a term of 14 years in prison.

According to the clerk's minutes, "Deft's petition for re-designation of sentence was recv'd & filed as well as the People's response; [¶] . . . [¶] The court GRANTS the petition and pursuant to Penal Code section 1170.18, the felony conviction of COUNT FOUR, 11350HS ONLY, is now designated as a misdemeanor." Despite numerous requests and motions to augment, the superior court clerk was unable to locate defendant's petition or the People's response to the petition or the order for redesignation (a form distinct from the minute order quoted above); thus, our record on appeal does not contain those documents.

DISCUSSION

On appeal, defendant contends the trial court should have also redesignated his conviction for violating Health and Safety Code section 11377 a misdemeanor. The People agree both of defendant's convictions are eligible to be redesignated as misdemeanors. We agree both convictions are eligible for redesignation. We requested supplemental briefing on whether the record on appeal is sufficient to permit meaningful review of defendant's claim on appeal, and if not, what effect that has on this appeal.

Under Penal Code section 1170.18, subdivision (f), a person who has completed their sentence for a conviction that would have been a misdemeanor under the "Safe Neighborhoods and Schools Act" (Proposition 47) may file an application in the trial court to have the conviction designated a misdemeanor and if the application meets the criteria under subdivision (f), the court *shall* designate the offense a misdemeanor (Pen. Code, § 1170.18, subd. (g)). Defendant was convicted in 1994 and both of his felony convictions for violating Health and Safety Code sections 11350 and 11377 would have been misdemeanors had Proposition 47 been in effect at the time. In 1998, the trial court sentenced defendant to a term of 14 years, and it appears he had completed this sentence when he petitioned the court for redesignation. As to the single case No. 94F04283, we can discern no basis in law to distinguish between the two qualifying convictions.

Under normal circumstances, faced with an inadequate record on appeal, we would remand the matter to the trial court for further proceedings on defendant's motion in the trial court. Even so, where, as here, the People have agreed that defendant's conviction under section 11377 should have been designated a misdemeanor and where, as here, we can find no arguable basis to disagree with the parties on this point, it would be a waste of judicial and attorney resources to remand the matter to the trial court for further proceedings. Under these circumstances, we accept the defendant's assignment of error and the People's concession thereof.

DISPOSITION

The order denying the petition to have defendant's felony conviction for violating Health and Safety Code section 11377 designated as a misdemeanor is reversed and the trial court is directed to enter a new and different order granting the petition's request to designate his conviction under Health and Safety Code section 11377 a misdemeanor.

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ DUARTE _____, J.